IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 713 OF 1987

The Commissioner of Income-tax,
Bombay City-VI, Bombay. ...Applicant
V/s.
M/s.Universal Drinks. ...Respondent

Mr.A.N. Kotangle with Mr.D.A. Dubey i/b. K.C. Sidhwa for Applicant.
Mr.P.J. Pardiwala with Mr.N.R. Mody i/b. R & G for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 20, 2005.

P.C. :-

. This is the reference under Section 256(1) of the Income Tax Act ('the Act' for Short) arising out of the order of the Tribunal in I.T.A.No.3847/(Bom)/1983 dated 21st May, 1985 for the Assessment Year 1979-80. The following question is referred for the opinion of this Court :-

> "Whether, on the facts and in circumstances of the case, the Tribunal was right in law in holding that the bottles and wooden shells were 'Plant' within the meaning of section 43(3) of

the Income-tax Act, and consequently in allowing 100% depreciation on the same." .

2. The factual matrix reveals that the assessee is a private limited company manufacturing soft drinks. The assessee has filed revised return, showing net loss of Rs.11,90,677/- in the revised return. The assessee company has claimed depreciation on the plant at the rate of 100% as the value of the items was less than Rs.750/- by considering the bottles and wooden shells as plant. The assessee has also claimed investment allowance on them. Before the authorities below, the assessee has referred to various decisions of the Tribunal where a view was taken that the assets in question i.e. bottles and wooden shells were to be considered as plants. ITO did not accept the said claim of the assessee. According to him, bottles and wooden shells did not constitute plant.

3. Being aggrieved, the assessee carried the matter before the CIT (Appeals). The CIT (Appeals) has considered the case relied upon by the assessee and

confirmed the view taken by the ITO holding that the bottles and wooden shells cannot be considered anything but packaging materials capable of re-use.

4. Being aggrieved by the aforesaid order, the assessee carried the appeal before the Income Tax Appellate Tribunal. The Tribunal has followed its earlier order in the case of **Premnath Monga Bottlers (Pvt) Ltd. in I.T.A. Nos.532, 533, 534 and 2548 (Del)/77-78** and the decision of the Gujarat High Court in the case of **C.I.T. v/s. Elecon Engineering Co.Ltd., (1974) 96 ITR 672** and finally allowed the claim of the assessee.

5. The Tribunal's finding that the above question involved interpretation of law sought to be referred for the opinion of this Court, is extracted hereinabove.

6. Learned Counsel for the Revenue urged that though the revenue has treated the bottles in question as a packaging material capable of reuse, the same by no means can be treated as plant. Learned Counsel further

submits that assessee is not entitled for 100% depreciation if the cumulative value of entire bottles and wooden shells is taken into account. In his submission, it would, obviously, be more than Rs.5000/-.

7 Learned Counsel for the assessee submits that under the similar facts and circumstances, the division Bench of **Madras High Court** in the case of **First Leasing Co. of India Ltd. V/s. CIT (No.2) (2000) 244 ITR 238** held that each bottle was an independent unit and was not dependent for its user on the availability of other bottles whether empty or filled. The use of one bottle was not interconnected with the use of other bottles. Since each bottle was an individual unit and all bottles together did not constitute a single integrated unit depreciation under the proviso to section 32(1)(ii) of the Income-tax Act is allowable.

8. As per the rules of interpretation, it is not the policy of the law to introduce complexity even when matters can be dealt with in a simple and straightforward manner by giving full effect to the

words used in the statutory provision, unless there are compelling reasons evident from the context in which the provision occurs. Therefore, each of the bottles has to be considered as an independent unit.

9. A similar view is also taken by a Division Bench of the **Allahabad High Court** in **CIT v. Aqueous Victuals P.Ltd. (2004) 266 ITR 573**, where also the bottles and crates used by the soft drink bottlers were held entitled to depreciation. In the said decision, the Allahabad High Court, following a decision of the **Andhra Pradesh High Court** in **CIT v. Sri Krishna Bottlers Pvt.Ltd. (1989) 175 ITR 154** held that bottles were essential tools of the trade. Without the bottles and shells, the soft drink could not be effectively transported. The bottles and their contents were totally interdependent. So were the shells. The bottles and shells also satisfied the durability test because it was nobody's case that their life was so transitory or negligible as to warrant an inference that they had no function to play in the assessee's trade. They were, therefore, "plant" for the purposes of the

Act and the assessee is entitled to depreciation in respect of them under section 32(1)(ii) of the Act.

10. The said decision of the Andhra Pradesh High Court in **CIT v. Sri Krishna Bottlers Pvt.Ltd. (1989) 175 ITR 154**, was confirmed by the Apex Court by a decision reported in **(1994) 209 ITR (St.) 85.**

11. The view taken by the Allahabad High Court in **CIT v. Aqueous Victuals P.Ltd. (2004) 266 ITR 573**, was also confirmed by the Apex Court by a decision reported in **(2004) 266 ITR (st.) 2.**

12. At this juncture, it will not be out of question to mention that the Tribunal while holding in favour of the assessee relied upon the decision of **Elecon Engineering Co.Ltd.** (cited supra), the said judgment has also been affirmed by the Supreme Court in **CIT vs. Elecon Engineering Co.Ltd. (1987) 166 ITR 66** and thereby affirmed the principle of law laid down by Gujarat High Court with regard to the plant as understood under the said Act and held that the word

"plant" in its ordinary meaning is a word of wide import and it must be broadly construed having regard to the fact that articles such as books and surgical instruments were expressly covered within the definition of plant under Section 43(3) of the Act. It was, thus, held that the word "plant" would include any article or object, fixed or immovable, used by a businessman for carrying on his business. It would not, however, cover his stock-in-trade, that is, goods bought or made for sale by the businessman.

13. In view of the above discussion, we hold that the Tribunal was right in coming to the conclusion that the bottles and wooden shells were plant within the meaning of the relevant provisions of the Act and that the assessee was entitled to 100% depreciation on bottles and wooden shells.

14. The above question, is, therefore, answered in affirmative in favour of the assessee and against the revenue.

15. Reference stands disposed of accordingly with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**